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April 14, 2004

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Marlene H. Dortch, Esquire  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554  
Attention: Audio Division

Re: **MB Docket No. 04-12**  
**RM-10834**  
**Russellville and Littleville, Alabama**

Dear Ms. Dortch:

Transmitted herewith, on behalf of Mike Self, are an original and four copies of his "Petition for Reconsideration" in the above-captioned proceeding.

Should any questions arise concerning this matter, please contact this office.

Yours very truly,

FLETCHER, HEALD & HILDRETH, P.L.C.



Frank R. Jazzo  
Counsel for Mike Self

FRJ\mbj  
Enclosures

cc: Service List

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BEFORE THE

**Federal Communications Commission** **RECEIVED**

WASHINGTON, D C 20554

APR 14 2004

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Amendment of Section 73.202(b) ) MB Docket No. 04-12  
FM Table of Allotments, ) RM-10834  
For FM Broadcast Stations. )  
 )  
(Russellville and Littleville, Alabama) )

To: The Secretary, to forward to Assistant Chief (Allocations ), Audio Division

**PETITION FOR RECONSIDERATION**

Mike Self, by his attorney, pursuant to Section 1.106 of the FCC's Rules,<sup>1</sup> hereby petitions for reconsideration, or in the alternative, rescission of the Report and Order in the above-captioned proceeding.<sup>2</sup> In support thereof, the following is stated:

On March 12, 2004, Mr. Self and Clear Channel Broadcasting Licenses, Inc. ("Clear Channel") filed Comments in the above-captioned proceeding. On March 29, 2004, Clear Channel filed Reply Comments with respect to Mr. Self's Comments. Today, the Commission released its Report and Order reallocating Channel 278A from Russellville to Littleville, Alabama, and modifying the license of FM broadcast station WMXV to specify operation thereon. The Report and Order states: "[l]ate-file [sic] comments were received from Mike Self." Report and Order at para. 1. The Report and Order does not further address Mr. Self's Comments. As

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<sup>1</sup> Section 1.106(f) of the FCC's Rules provides for the filing of a Petition for Reconsideration within 30 days from the date of public notice of the final Commission action. In the instant case, public notice will be given when the Report and Order is published in the Federal Register. Out of an abundance of caution, Mr. Self intends to retender his Petition for Reconsideration within 30 days of Federal Register publication.

<sup>2</sup> DA 04-972, released April 14, 2004 ("Report and Order").

demonstrated below, Mr. Self's Comments were timely-filed and the Commission's failure to consider them was error sufficient to warrant the reconsideration or rescission of the Report and Order.<sup>3</sup>

In its Reply Comments, Clear Channel observed that the Commission's Electronic Comment Filing System ("ECFS") lists Mr. Self's Comments as having been received on March 17, 2004, which is after the March 12, 2004, deadline for Comments set forth in the *Notice of Proposed Rulemaking* ("NPRM") in this proceeding. *Reply Comments* at Fn. 1. The first page of Mr. Self's Comments contained in ECFS, a copy of which is attached hereto as Exhibit 1, shows a "Received-FCC" date-stamp of March 12, 2004, which has been crossed out, with an additional date-stamp of March 17, 2004, also appearing on the first page. Mr. Self does not know why the March 12 date-stamp was crossed-out in ECFS. Paper copies of Mr. Self's Comments were, in fact, hand-delivered for filing with the Commission by this office on March 12, 2004. Our date-stamped receipt copy showing a date-stamp of March 12, 2004, is attached hereto as Exhibit 2. Accordingly, Mr. Self's Comments were timely-filed in this proceeding and should have been accepted and considered in this proceeding.

Clear Channel also characterized Mr. Self's Comments as "unverified." *Reply Comments* at p.2. The final sentence of Mr. Self's Comments, however, was: "I verify these comments to be true to the best of my knowledge." While Mr. Self's verification does not track the precise language of Section 1.16 of the FCC Rules, it is clear that Mr. Self intended to verify the accuracy of his Comments. In order to eliminate any doubt about the veracity of Mr. Self's

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<sup>3</sup> Section 1.102(b)(2) of the FCC's Rules authorizes the Audio Division to stay the effect of its action pending disposition of a Petition for Reconsideration. The failure to consider Mr. Self's timely filed Comments provides ample justification for staying the effect of the Report and Order.

Comments, Mr. Self has provided a Declaration, under penalty of perjury, that his Comments are true and correct. A copy of Mr. Self's Declaration is attached hereto as Exhibit 3.

In its Reply Comments, Clear Channel does acknowledge that, contrary to its assertion in its Petition for Rulemaking, Littleville no longer has an operating school. While Mr. Self believes this was an innocent oversight on Clear Channel's part, Littleville's waning fortunes do call into question Clear Channel's real "target" in proposing to change WMXV(FM)'s community of license to Littleville. While Clear Channel does not propose to relocate WMXV(FM)'s transmitter site as part of its rulemaking proposal, it strains credulity to believe that Clear Channel merely wishes to take away Russellville's only FM broadcast service and its only full-time audio service in order to focus WMXV(FM)'s primary service on Littleville, when Russellville's population (8,971–2000 Census) is more than nine times greater than Littleville's. In fact, Russellville added more people between 1990 and 2000 than there are people in Littleville (1,159 versus 978).

While Littleville's name may be apropos, what Littleville does have going for it is that it is approximately seven miles closer to the Florence, Alabama Urbanized Area than is Russellville. With an appropriate site move, WMXV(FM)'s 70 dBu contour could encompass a substantial portion, if not all of the Florence Urbanized Area. While the *NPRM* would require Clear Channel to provide a gain and loss study in the event it files an application for an alternate site, given Littleville's proximity to the Florence Urbanized Area, where 18 percent of the Florence Urbanized Areas is already being covered, the Commission must issue a "Request for Supplemental Information" to Clear Channel to submit a showing pursuant to *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988), to demonstrate that Littleville is independent of the Florence

Urbanized Area and therefore entitled to consideration as a first local service. See, *Chillicothe and Ashville, Ohio*, 18 FCC Rcd 11230 (Med. Bur. 2003). The Report and Order's failure to require a Tuck showing or even impose the NPRM's gain/loss condition is an error which must be reconsidered.

The Commission has stated that it remains concerned with the potential for stations to migrate from relatively underserved rural areas proximate to well-served urban areas. *Memorandum Opinion and Order in MM Docket No. 99-322, DA 03-3443*, released October 31, 2003, at para. 4. That is why the Commission will not blindly apply a first local service preference to a proposal for a community proximate to an Urbanized Area. See, *RKO General, Inc. (KFRC)*, 5 FCC Rcd 3222 (1990). That well-founded concern, which Mr. Self raised in his Comments, was not considered at all.

While Clear Channel cites *Royston and Arcade, Georgia*, 16 FCC Rcd 8906 (Chief, Allocations Br. 2001) and *Geneseo, Illinois, and Dewitt, Iowa*, 12 FCC Rcd 19477 (Chief, Allocations Br. 1997), for the proposition that a preferential arrangement of allotments results where a first local service occurs at a new community while the old community would be left receiving only daytime-only AM service, it should be noted that in neither case cited is the disparity in the size of the losing community versus the gaining community as great as the disparity between Russellville and Littleville. Royston, the losing community, had a little more than 2,000 more people than Arcade. Geneseo, the losing community, had less than 1,500 more people than Dewitt. Here, Russellville has nearly 8,000 more people, or more than nine times more people than Littleville. Providing Littleville with a first local service at the expense of

Russellville's only full-time audio service and only FM broadcast service is the very definition of blind application of the first local service preference.

Wherefore, for the foregoing reasons, Mr. Self requests that the Commission reconsider or rescind the Report and Order, deny Clear Channel's request to relocate WMXV(FM) to Littleville, or in the alternative, request a showing pursuant to *Faye and Richard Tuck*, in order to determine whether Littleville is deserving of a first local service preference.

Respectfully submitted,

MIKE SELF

By:   
Frank R. Jazzo

His Attorney

Fletcher, Heald & Hildreth, P.L.C.  
1300 North 17<sup>th</sup> Street, 11<sup>th</sup> Floor  
Arlington, Virginia 22209  
(703) 812-0400

April 14, 2004

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Before the  
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Washington, D.C. 20554

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~~MAR 12 2004~~

~~Federal Communication Commission  
Bureau / Office~~

In the Matter of

Amendment of Section 73.202(b)  
FM Table of Allotments,  
FM Broadcast Stations.  
(Russellville and Littleville, Alabama)

)  
)  
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)  
)  
MB Docket No. 04-12  
RM-10843

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MAR 17 2004

Federal Communications Commission  
Office of the Secretary

COMMENTS

To: Assistant Chief, Audio Division:

Mike Self submits the following comments in opposition to the proposal advanced

In the Commission's Notice of Proposed Rulemaking (DA 04-72), released January 20, 2004,

Which proposed the re-allotment of Channel 278A from Russellville, Alabama to

Littleville, Alabama, and the modification of the license of WMXV(FM) to specify operation on Channel

278A at Littleville, Alabama.

Mike Self has standing to file as he is a resident of the service area of WMXV(FM)

The proposed re-allotment of Channel 278A from Russellville, Alabama to Littleville, Alabama, would be contrary to the public interest for the following reasons.

Has no local school as stated in Proposed Rulemaking, (DA 04-72) no hospitals, fast food chains, post office.

Would leave Russeville Alabama several times larger than Littleville, Alabama without a full time radio service. This move would not serve the community best.

Clear Channel says signal will be same! They are in the process of building a new tower to house WMXV(FM) and WVNA(FM) a couple of miles west of current tower.

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the Matter of

Amendment of Section 73.202(b)  
FM Table of Allotments,  
FM Broadcast Stations,  
(Russellville and Littleville, Alabama)

)  
) MB Docket No. 04-12  
) RM-10843  
)

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MAR 12 2004

COMMENTS

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Bureau / Office

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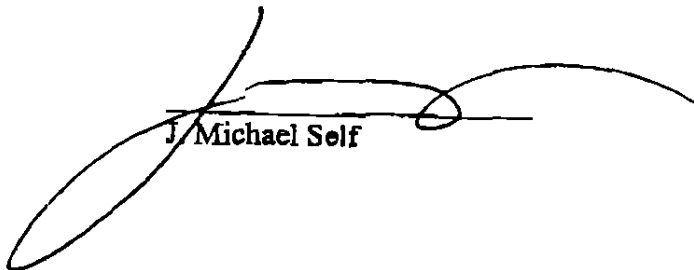
Clear Channel says signal will be same! They are in the process of building a new tower to house WMXV(FM) and WVNA(FM) a couple of miles west of current tower.



**DECLARATION**

I, J. Michael Self, declare under penalty of perjury, that my Comments filed in MB  
Docket No. 04-12 on March 12, 2004, are true and correct.

Executed on April 13, 2004



J. Michael Self

**CERTIFICATE OF SERVICE**

I, Michelle Brown Johnson, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that a copy of the foregoing "Petition for Reconsideration" was sent this 14<sup>th</sup> day of April, 2004, by first-class United States Mail, postage prepaid to:

John A. Karousos, Assistant Chief\*  
Audio Division, Media Bureau  
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Michelle Brown Johnson